



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/871,318

05/31/2001

David Fikstad

WP 2001.00

1207

23639 7590 06/14/2011

BINGHAM MCCUTCHEN LLP

Three Embarcadero Center

San Francisco, CA 94111-4067

EXAMINER

YOUNG, MICAH PAUL

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

06/14/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID FIKSTAD and DANYI QUAN

Appeal 2010-001150
Application 09/871,318
Technology Center 1600

Before DEMETRA J. MILLS, ERIC GRIMES, and LORA M. GREEN,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the decision entered March 23, 2011 (“Decision”). Appellants argue that we erred in our treatment of the Coop Declaration because we “never considered all of the evidence anew along with the testimony of Dr. Coop[,] . . . the Coop declaration being evaluated only on its ability to overturn th[e] obviousness determination” (Req. Rhg. 3-4). Appellants also argue that the Coop Declaration rebuts the

presumption that the cited references are enabled for what they disclose (*id.* at 5-8).

We have considered Appellants' arguments on rehearing but they do not persuade us of any error in the Decision. The Decision discussed the evidence provided by Dr. Coop (Decision 4-5, FFs 2-7) and weighed that evidence (*id.* at 7) against the evidence provided by the Examiner's references (*id.* at 7-8). The Decision concluded that the prior art "provide[d] evidence that people working in this field routinely modified transdermal drug delivery systems to administer different drugs, with different structures and chemical properties" (*id.* at 8) and that "the Coop declaration . . . does not provide an adequate factual basis on which to conclude that undue, rather than routine, experimentation would have been required to administer lasofoxifene transdermally" (*id.*). Thus, the Decision properly considered Appellants' declaratory evidence along with the other evidence of record.

While Appellants may disagree with the conclusion we reached upon weighing the evidence, they have not shown that we overlooked or misunderstood any issue of fact or law in reaching that conclusion. The request for rehearing is denied.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REHEARING DENIED

lp